

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 457 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAMESHKUMAR MEGHJIBHAI KANSARA

Versus

RAJKOT MUNICIPAL CORPORATION

Appearance:

MR BD KARIA for Petitioner

MR KV GADHIA for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 16/07/98

ORAL JUDGEMENT

Rule. By way of this Special Civil Application, the petitioner has challenged the legality of the order dated 11th July 1996 passed by the Deputy Commissioner, Rajkot Municipal Corporation, imposing the penalty of withholding annual increments in salary for four years without future effect.

At the material point of time, the petitioner was working as Helper-cum-Labourer with the respondent Municipal Corporation. He was served with a show cause notice in December 1995 along with the memorandum of

allegations. It is alleged that the petitioner kept open the delivery valve and operated the motor through remote control system which could have caused breach in electrical line, causing financial loss to the Corporation. The petitioner replied to the show cause notice on 6.1.1996. However, the respondents imposed the impugned penalty.

It is contended by the learned Counsel that the said penalty has been imposed without holding any departmental inquiry or providing an opportunity to defend the petitioner. On the other hand, the learned Counsel appearing for the respondent Corporation submitted that the petitioner has been imposed with a minor penalty and in view of the provisions of Section 56(2) of the BPMC Act, no departmental inquiry is required to be held. The petitioner has been given another show cause notice and in response to that, the reply was submitted. The impugned penalty has been inflicted after considering the entire material including the reply submitted by the petitioner.

I have considered the rival contentions. Section 56 of the BPMC Act empowers to impose any penalty specified in sub-section (2) on a Municipal officer or servant if such authority is satisfied that such officer or servant is guilty of a breach of departmental rules or discipline or of carelessness, neglect of duty or other misconduct or is incompetent. There are certain exceptions which are not relevant in the present context. Under sub-clause (2) various penalties have been provided which includes withholding of increment or promotion including stoppage at an efficiency bar, removal from service etc. Sub-clause (3) provides that no officer or servant shall be reduced to a lower post or removed or dismissed from service unless he has been given a reasonable opportunity of showing cause against his reduction, removal or dismissal. Thus, the inquiry is contemplated only in case of reduction to the lower post or removal or dismissal from service. In the present case, it is not in dispute that though the case of the petitioner is not covered by sub-clause (3), still the show cause notice was given. However, the contention of the learned Counsel for the petitioner is that he had submitted reply to the show cause notice and he had asked for personal hearing which was not given to him. In my view, when a show cause notice is given and in the reply if the delinquent asked for a personal hearing, it should ordinarily be given. In view of this, the ends of justice would meet if the petitioner is given an opportunity of hearing by the competent authority.

In view of the aforesaid, this Special Civil Application is allowed. The impugned order dated 11th July 1996 imposing the penalty of withholding annual increments in salary for four years is quashed and set aside. The respondent Corporation shall pass a fresh order after giving an opportunity of hearing to the petitioner. Rule is made absolute to the aforesaid extent.

sreeram.